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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 MARCHELLO DSAUN MCCAIN,

21 Defendant.

Case No. 15CR0174-W

DATE: January 12, 2018

TIME: 10:00 a.m.

**UNITED STATES' MOTION
FOR ORDER TO FILE
SENTENCING MEMORANDUM
IN EXCESS OF 25 PAGES**

22 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its
23 counsel, Adam Braverman, United States Attorney, and Shane P. Harrigan and Caroline P.
24 Han, Assistant U.S. Attorneys, who hereby move this Court for an order allowing the
25 Government to file the United States' Sentencing Memorandum, which exceeds 25 pages.

26 This motion is made for the following reasons:

27 The major issue raised in Defendant's sentencing pleadings is the application of the
28 terrorism enhancement of USSG § 3A1.4. The application of the § 3A1.4 terrorism
enhancement requires proof by clear and convincing evidence. *See United States v.*
Tankersley, 537 F.2d 1100, 1106 (9th Cir. 2008). In his sentencing pleadings, Defendant
objects to the application of the enhancement. Defendant argues that the application is not

1 supported by the facts, and further claims that this Court's reliance on certain facts on
2 various grounds, including a claim of a violation of the Sixth Amendment.

3 The United States submits that evidence uncovered from an extensive investigation,
4 which began in or about April 2014, proves by clear and convincing evidence the
5 applicability of the terrorism enhancement. That evidence is complex and extensive. It
6 includes social media records, telephone records, business records, financial records,
7 records obtained from numerous federal search warrants, as well as interviews of numerous
8 individuals, including the Defendant. Furthermore, evidence of Defendant's relevant
9 criminal conduct spans over 15 months -- from in or about November 13, 2013 through
10 January 2015 -- and involves several individuals, including individuals residing in San
11 Diego, Minneapolis, Canada, Syria and Turkey. The United States does not intend to
12 inconvenience the Court or defense counsel by filing a Sentencing Memorandum that
13 exceeds the normal page limits. However, the United States submits that its Sentencing
14 Memorandum, which exceeds the 25 pages, is necessary to fully and thoroughly present
15 the clear and convincing proof required for the application of the terrorism enhancement.

16
17 Dated: January 4, 2018

Respectfully submitted,

18 ADAM BRAVERMAN
19 United States Attorney

20 /s/ Shane P. Harrigan
21 SHANE P. HARRIGAN
22 CAROLINE P. HAN
23 Assistant U.S. Attorneys
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCHELLO DSAUN MCCAIN,

Defendant.

Case No.: 15CR0174-W

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, SHANE P. HARRIGAN, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES' SENTENCING MEMORANDUM** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

David Zugman, Esq.
Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2018.

s/ Shane P. Harrigan
SHANE P. HARRIGAN